

#### **§ 701.37**

instrumentalities or agents against that party, related parties, or third parties, the participant shall refund all or part of any of those program payments paid to that participant for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP assistance and the facts and circumstances surrounding such claim.

(e) A participant who has knowingly supplied false information or filed a false claim shall be ineligible for cost-share assistance related to the disaster for which the false information was filed, or for any period of time FSA deems appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices that do not meet required specifications.

#### **§ 701.37 Loss of control of the property during the practice life span.**

In the event of voluntary or involuntary loss of control of the land by the ECP cost-share recipient during the practice life-span, if the person acquiring control elects not to become a successor to the ECP agreement and the practice is not maintained, each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP cost-share assistance related to that practice. The practice life span, for purposes of this section, includes any maintenance period that is essential to its success.

#### **§§ 701.38–701.40 [Reserved]**

#### **§ 701.41 Cost-share assistance not subject to claims.**

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at parts 792 and 1403 of this title shall be

#### **7 CFR Ch. VII (1–1–07 Edition)**

applicable to this program and the provisions most favorable to a collection of the debt shall control.

#### **§ 701.42 Assignments.**

Participants may assign ECP cost-share assistance payments, in whole or in part, according to part 1404 of this title.

#### **§ 701.43 Information collection requirements.**

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0082.

#### **§ 701.44 Agricultural Conservation Program (ACP) contracts.**

Contracts for ACP that are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

#### **§ 701.45 Forestry Incentives Program (FIP) contracts.**

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 2002, shall continue to apply to FIP contracts in effect as of that date, except as provided in accord with a delegation of the administration of that program and such delegation and actions taken thereunder shall apply to any other FIP matters as may be at issue or in dispute.

#### **§ 701.50 2005 hurricanes.**

In addition benefits elsewhere allowed by this part, claims related to calendar year 2005 hurricane losses may be allowed to the extent provided for in §§ 701.50 through 701.57. Such claims under those sections will be limited to losses in counties that were

## Farm Service Agency, USDA

## § 701.54

declared disaster counties by the President or the Secretary because of 2005 hurricanes and to losses to oyster reefs. Claims under §§ 701.51 through 701.57 shall be subject to all normal ECP limitations and provisions except as explicitly provided in those sections.

[71 FR 30265, May 26, 2006]

### § 701.51 Definitions.

The following definitions apply to §§ 701.52 through 701.57:

*Above-ground irrigation* facilities means irrigation pipes, sprinklers, pumps, emitters, and any other integral part of the above ground irrigation system.

*Barn* means a structure used for the housing of animals or farm equipment.

*Commercial forest land* means forest land with trees intended to be harvested for commercial purposes that has a productivity potential greater than or equal to 20 cubic feet per year of merchantable timber.

*Date of loss* means the date the hurricane damage occurred in calendar year 2005.

*Eligible county* means any county that was declared a disaster county by the President or the Secretary because of a calendar year 2005 hurricane, that otherwise meets the eligibility requirements of this part.

*Forest management plan* means a plan of action and direction on forest lands to achieve a set of results usually specified as goals or objectives consistent with program policies prepared or approved by a natural resource professional, such as a State forestry agency representative.

*Poultry house* means a building used to house live poultry for the purpose of commercial food production.

*Private non-industrial forest land* means rural commercial forest lands with existing tree cover, or which are suitable for growing trees, that are owned by a private non-industrial forest landowner as defined in this section.

*Private non-industrial forest landowner* means, for purposes of the ECP for forestry, an individual, group, association, corporation, Indian tribe, or other legal private entity owning non-industrial private forest land or who receives concurrence from the landowner

for making the claim in lieu of the owner, and for practice implementation and who holds a lease on the land for a minimum of 10 years. Owners or lessees principally engaged in the primary processing of raw wood products are excluded from this definition. Owners of land leased to lessees who would be excluded under the previous sentence are also excluded.

*Shade house* means a metal or wood structure covered by a material used for shade purposes.

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### § 701.52 Availability of funding.

Payments under §§ 701.53 through 701.57 are subject to the availability of funds under Public Law 109-149.

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### § 701.53 Debris removal and water for livestock.

Subject to the other eligibility provisions of this part, an ECP participant addressing damage in an eligible county from hurricanes during calendar year 2005 may be allowed up to 90 percent of the participant's actual cost or of the total allowable cost for cleaning up structures such as barns, shade houses and above-ground irrigation facilities, for removing poultry house debris, including carcasses, and for providing water for livestock.

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### § 701.54 Oysters.

(a) Notwithstanding § 701.5(b), but otherwise subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be made available under this section for the eligible cost of refurbishing public or private oyster reefs damaged in calendar year 2005 by a 2005 hurricane. Oyster bed refurbishing consists of removing mud from public and private oyster beds, staking out the leased areas, reestablishing the oyster beds using crushed limestone, recycled oyster shells, or other available and suitable approved cultch materials, reseeding the oyster beds, and related actions approved by FSA.

(b) Notwithstanding § 701.26, an ECP participant shall not receive more than 90 percent of the participant's actual